IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 440 OF 1997

Ramesh Janardan Patil..... ....Appellant.
(Orig.Accd.No.1)

V/s

The State of Maharashtra .... Respondents.

Mr.S. V. Marwadi, Adv. for the appellant.

Mrs.P.H. Kantharia, APP for the State.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

23rd June, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned II Additional Sessions Judge, Raigad-Alibag in Sessions Case No.69 of 1992 on 16.5.1997 the appellant-accused have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence on and

reappreciated the same.

3. The prosecution story stated briefly is that accused Nos.1 to 6 and the deceased Sudhir Balkrishna Phadke were resident of village Nandgaon, Taluka Panvel, District Raigad. There were two rival groups in that village one led by Suresh Ramchandra Phadke and other by Bhalchandra Tukaram Khutale.

4. On 5.11.1991 there was cricket match of small boys in village Nandgaon and the accused as also the deceased were witnessing the match. Around 12.15 p.m. on that day there was a quarrel between the complainant Sudhir Phadke and accused persons who were assaulting the victim as a result of that assault he died. Complaint was lodged, investigation was conducted, accused persons were arrested. The prosecution examined as many as six witnesses to prove its case and the learned trial Judge on appreciation of this evidence came to the conclusion that only accused No.1 is proved to have committed the offence of murder. He accordingly convicted him to suffer imprisonment for life and acquitted accused Nos.2 to 6 of all the charges leveled against them. The learned trial Judge has in effect rejected the entire prosecution evidence in so far five of the six accused persons are concerned and has accepted the same while convicting the accused No.1-Ramesh Janardan Patil the present appellant.

5. P.W.6-Balaram Tandel is police head constable who recorded the complaint Ex.54 and registered the offence on the basis of this complaint as crime No.I-293 of 1991 and handed over further investigation to PSI Sonawane

as per directions of P.I. Borase. His evidence is therefore inconsequential in so far as proof of murder is concerned which is necessary for conviction of accused No.1.

6. P.W.1-Pradeep Phadke has lodged the complaint Ex.54. He has stated in para 2 of his deposition that he heard the quarrel from about 100 ft. on 5.11.91 and therefore went to see as to what the quarrel was. When he reached there he saw that his brother Sudhir Phadke was lying on the ground, accused No.1 was giving blows of barchi to his brother and thereafter the accused Ramesh ran towards palm tree field of Palaspe area. He does not mention anything about other assailants or accused persons. In his cross examination several contradictions are brought on record. The witness was very uncertain in relation to all the queries put to him in the cross examination. He admits in his cross examination that his father who is police head constable knew of the incident prior to his lodging the report with the police. P.W.2-Sushma Khutale in her deposition says that she saw the accused assaulting the victim but has admitted in cross examination that when she saw the accused running towards O.N.G.C. His back was towards the witness. There is therefore no evidence to know as to how she identified the person running away as accused No.1 only. She also does not speak about assault by any other person. P.W.3-Dinkar Khutale is witness to the spot panchnama. He speaks nothing about assault. P.W.4-Dattatray Bhalekar is declared hostile. He was also witness to panch regarding

recovery of clothes. The recovery of clothes thus is not proved as nobody else even the Investigating Officer is not examined to show that such recovery was made. P.W.5-Abasaheb Sonawane is the investigating officer who says about information coming on phone and has arrested all the accused persons. He states nothing as to why other persons were arrested, what was their involvement, how was message received, when was complaint lodged, in any event, he is not an eye witness. The entire evidence on record is therefore in the shape of testimony of P.W.1 who obviously is vitally interested person directly related to the victim. There is positive attempt to rope in some persons as can be seen from the fact that these persons have been charge sheeted. It is obvious that the prosecution has not put forward the complete story as it might have occurred. Admittedly when there was cricket match going on an assault took place, several people ran towards the place of incident. The prosecution having chosen to examine only one person goes to show lack of proper investigation.

7. In any event, the learned trial Judge having chosen to disbelieve all the witnesses in so far as involvement of accused Nos. 2 to 6 is concerned he could not have been in fitness of things relied on the testimony of P.W.1 who was highly interested interested to hold that the prosecution has proved beyond reasonable doubt the involvement of accused No.1 the present appellant in the murder of the victim. By no acceptable principle of law such conviction can be

sustained. We are therefore constrained to interfere and set aside the order of conviction and sentence as passed by the learned trial Judge for gross inadequate evidence and for total absence of corroboration. In the result therefore the appeal succeeds and is allowed. The sole appellant-accused is already on bail. His bail bond stands canceled. He is acquitted of charges leveled against him.